


OLC has Reviewed

OLC 80-2134/1

15 DEC 1980

MEMORANDUM FOR: See Distribution


STAT FROM:

  
Chief, Legislation Division, OLC

SUBJECT: Fiscal Year 1982 Intelligence  
Authorization Bill

1. Attached is the draft Fiscal Year 1982 Intelligence Authorization Bill, with accompanying sectional explanation, display of changes in existing law, and cost analysis.

2. This material is usually due at the Office of Management and Budget on 15 December, but additional time is available for fiscal year 1982 authorization bills because of the current transition situation. I would appreciate receiving any comments which you may have on the attached material no later than COB Wednesday, 7 January 1981.

3. Please note that Title VIII of the Bill (Investigation of Unauthorized Disclosures of Classified Information) and its accompanying analysis were drafted by   
Associate General Counsel for Intelligence Community Affairs.

4. In addition to the distribution listed below, the draft Bill is being sent to NSA and FBI working level contacts for comment.



Attachments

See Distribution on following page.

STAT

Approved For Release 2002/08/28 : CIA-RDP92-00455R000200050005-4

Approved For Release 2002/08/28 : CIA-RDP92-00455R000200050005-4

A BILL

To authorize appropriations for fiscal year 1982 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1982."

TITLE I - INTELLIGENCE ACTIVITIES

Authorization of Appropriations

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1982 for the conduct of the intelligence and intelligence-related activities of the following agencies of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The Drug Enforcement Administration.

Classified Schedule of Authorizations

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1982, for the conduct of the intelligence and intelligence-related activities of the agencies listed in such section, are those specified in the classified Schedule of Authorizations prepared by the committee of conference to accompany \_\_\_\_\_ of the 97th Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the Executive Branch.

Congressional Notification of Expenditures  
in Excess of Program Authorizations

SEC. 103. During fiscal year 1982, funds may not be obligated or expended for any program for which funds are authorized to be appropriated by section 101 in an amount in excess of the amount specified for that program in the classified Schedule of Authorizations described in section 102 unless the Director of Central Intelligence or the Secretary of Defense notifies the appropriate committees of Congress of the intent to make such obligation or expenditure not less than fifteen days before such obligation or expenditure is made. Statutory provisions limiting the transfer of funds between appropriations shall not apply to the reprogramming of funds among the intelligence programs for which funds are authorized to be appropriated by section 101.

Conduct of Intelligence Activities

SEC. 104. Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is prohibited by the Constitution or laws of the United States.

TITLE II - INTELLIGENCE COMMUNITY STAFF

Authorization of Appropriations

STAT SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1982 the

Authorization of Personnel End-Strength

STAT SEC. 202. (a) The Intelligence Community Staff is authorized  full-time personnel as of September 30, 1982. Such personnel may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1982, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1982, any officer or employee of the United States or member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

Intelligence Community Staff Administered in Same Manner as Central Intelligence Agency

SEC. 203. During fiscal year 1982, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III - CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Authorization of Appropriations

STAT SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1982

TITLE IV - TECHNICAL PROVISIONS

Increases in Employee Benefits Authorized by Law

SEC. 401. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

Compliance with Section 607 of P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974

SEC. 402. There are authorized to be appropriated for fiscal year 1983 such sums as may be necessary for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, and for the Central Intelligence Agency Retirement and Disability Fund.

Technical Amendment to Section 303 of the  
National Security Act of 1947

SEC. 403. Section 303 of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking from the last sentence of 50 U.S.C. 405(a) the word "at" and the words which follow, up to and including the word "service,".

**TITLE V - OFFSETTING DISINCENTIVES  
TO OVERSEAS SERVICE**

Comparability of Allowances and Benefits

SEC. 501.(a) The Director of Central Intelligence may authorize payment by the Central Intelligence Agency to its officers and employees, and their dependents, and by other elements of the Intelligence Community to their officers and employees who serve in like circumstances, and their dependents, of travel, transportation, health care, and other allowances and benefits in a manner and under circumstances comparable to those provided under Chapter 9 of the Foreign Service Act of 1980 (P.L. 96-465), as enacted on 17 October 1980 or as subsequently amended.

(b) Whenever any provision of law relating to allowances and benefits for members of the Foreign Service or their dependents is enacted in a form other than an amendment to Chapter 9 of the Foreign Service Act of 1980, and the Director of Central Intelligence determines that it would be appropriate for the purpose of promoting the effective performance of authorized intelligence functions, the Director of Central Intelligence may authorize payment of comparable allowances and benefits by the Central Intelligence Agency to its officers and employees, and their dependents, and by other elements of the Intelligence Community to their officers and employees who serve in like circumstances, and their dependents.

Reassignments Involving Domestic Relocations/Promoting  
Effective Performance of Authorized Intelligence Functions

SEC. 502. The Director of Central Intelligence may authorize payment by the Central Intelligence Agency to its officers and employees, and their dependents, and by other elements of the Intelligence Community to their officers and employees who serve in like circumstances, and their dependents, of: (i) relocation expenses, including but not limited to expenses incident to household moves necessitated by foreign-to-domestic and domestic-to-foreign assignments for which reimbursement is not specifically authorized under

any other provision of law; and, (ii) other allowances and benefits that the Director of Central Intelligence determines to be appropriate for the purpose of promoting the effective performance of authorized intelligence functions: Provided, that with respect to assignments described in subsection (i) of this section, no payment shall be made for expenses associated with the sale of a residence (or settlement of an unexpired lease) at an old station and purchase of a home at a new station when either station is located within the Standard Metropolitan Statistical Area of the District of Columbia (as defined in the Statistical Abstract of the United States (100th ed.), Bureau of the Census, U.S. Department of Commerce, or successor Abstracts).

SEC. 503. For purposes of this title, the term "Intelligence Community" means Intelligence Community as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders.

TITLE VI - AMENDMENTS TO THE FOREIGN INTELLIGENCE  
SURVEILLANCE ACT

Physical Entry for the Purpose of  
Implementing an Electronic Surveillance  
Under Section 102(a) of the Act

SEC. 601. Subsection 102(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding the following new provision:

"(5) The Attorney General may authorize physical entry of property under the open and exclusive control of a foreign power, as defined in subsections 101(a)(1), (2), or (3), for the purpose of installing, repairing, or removing any electronic, mechanical, or other surveillance device used in conjunction with an electronic surveillance authorized in accordance with subsection 102(a)."

Modification of Targeting  
Standards Pertaining to  
Agents of Foreign Powers

SEC. 602. Subsection 101(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by deleting "or" at the end of (C), changing the period at the end of (D) to a semi-colon, adding "or" at the end of (D), and adding the following new provision:

"(E) is a current or former senior official of a foreign power as defined in subsection (a)(1) or (2)."

Extension of the Emergency  
Surveillance Period

SEC. 603. Subsection 105(e)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by deleting "twenty-four" wherever it appears and inserting in lieu thereof "forty-eight."



TITLE VII - PROTECTION OF INTELLIGENCE PERSONNEL  
AND INSIGNIA/PROHIBITION OF FALSE  
REPRESENTATION

Protection of Intelligence Personnel

SEC. 701.(a) Section 1114 of title 18, United States Code, is amended by inserting the words "or attempts to kill" after the word "kills" and by deleting all that follows the words "law enforcement functions," and substituting in lieu thereof the following:

"or any officer or employee of any department or agency within the Intelligence Community (as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders), not already covered under the terms of this section, or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration while engaged in the performance of his official duties or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years."

(b) Subsection 1116(b)(6) of title 18, United States Code, is amended by inserting in lieu thereof the following:

"(6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States -

(A) pursuant to designation as such by the Secretary of State; or

(B) under the auspices of any department or agency within the Intelligence Community (as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders) pursuant to designation as such by the Director of Central Intelligence or his designees; or

(C) under the provisions of 50 U.S.C. 403h."

Unauthorized Use of Names, Initials, or  
Seals/Impersonation of Intelligence Personnel

SEC. 702. The tenth paragraph of section 709 of title 18, United States Code, is amended by: inserting the words "or the Director of Central Intelligence" after the words "Director of the Federal Bureau of Investigation"; inserting the words "or 'Central Intelligence Agency'" after the words "knowingly uses the words 'Federal Bureau of Investigation'"; inserting the words "or 'C.I.A.' or the seals thereof" after the words "or the initials 'F.B.I.'"; inserting the words "or seals in connection with any solicitation, impersonation or representation for other than authorized purposes or" after the words "any colorable imitation of such words or initials"; and by inserting the words "or the Central Intelligence Agency" after the words "approved, endorsed, or authorized by the Federal Bureau of Investigation".

TITLE VIII - PROTECTION OF INTELLIGENCE INFORMATION

Investigation of Unauthorized Disclosures of  
Classified Information

Findings

SEC. 801. The Congress hereby makes the following findings:

(a) Improper disclosures of classified information by government employees can be harmful to the foreign relations and national defense interests of the United States.

(b) Such disclosures by persons who cannot be identified and held accountable for their actions are harmful to the orderly and effective functioning of the government.

(c) More effective steps must be taken to curtail unauthorized disclosures of classified information.

Definitions

SEC. 802.(a) For purposes of this title, "classified information" means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive Order (or a regulation or order issued pursuant to a statute or Executive Order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(b) For purposes of this title, "unauthorized disclosure" means any communication, revelation, or publication without authority, right, or permission pursuant to--

(1) the provisions of a statute or Executive Order, and contrary to the regulations and procedures issued pursuant thereto;

(2) order of any United States Court; or

(3) provisions of any Rule of the House of Representatives or Resolution of the Senate.

Removal From The Federal Service

SEC. 803.(a) Notwithstanding any other provision of law, an officer or employee of the United States or member

of the uniformed services who causes or participates in the unauthorized disclosure of classified information as defined in this title may be removed from the civil service or uniformed services, or be disciplined as otherwise authorized by law or regulation.

(b) Such removal shall be accomplished in accordance with the provisions of any statute or Executive Order (or rule or regulation issued pursuant thereto) otherwise applicable to removal or discipline of such officers, employees, or members.

(c) No removal or disciplinary action against an officer or employee of the United States or a member of the uniformed services for unauthorized disclosure of classified information shall be reviewable in any court of the United States.

Investigation of Unauthorized Disclosures  
of Classified Information

SEC. 804. (a) The Federal Bureau of Investigation is authorized to investigate any unauthorized disclosure of classified information. Upon recommendation of the head of any department or agency for investigation of an unauthorized disclosure of classified information, the Federal Bureau of Investigation shall conduct an investigation for the purpose of determining whether an officer or employee of the United States or member of the uniformed services caused such unauthorized disclosure.

(b) In the conduct of investigations authorized or required by this section, the Federal Bureau of Investigation may interview any person and use any investigative technique otherwise available under the Constitution or laws of the United States.

Civil Investigative Demand  
Grounds for Issuance

SEC. 805. (a) Whenever the Attorney General, the Assistant Attorneys General in charge of the Civil Division or the Criminal Division of the Department of Justice, or the Director of the Federal Bureau of Investigation has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation of an unauthorized disclosure of classified information, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

Contents of Demand; Statement of Alleged  
Violation; Description of Material to be Produced;  
Return Date; Custodian

(b) Each such demand shall--

(1) state the nature of the conduct constituting the alleged unauthorized disclosure of classified information which is under investigation;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

Restrictions; Unreasonable Requirements;  
Privileged Information

(c) No such demand shall--

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged unauthorized disclosure of classified information; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged unauthorized disclosure of classified information.

Service; Persons Who May Serve;  
Place of Service

(d) Any such demand may be served by any agent of the Federal Bureau of Investigation, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

Judicial Proceedings  
Court Order for Enforcement; Grounds;  
Jurisdiction; Venue

SEC. 806.(a) Whenever any person fails to comply with any civil investigative demand duly served upon him under section 5 or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this Act.

Petition for Order Modifying or Setting Aside  
Demand; Jurisdiction; Venue; Grounds; Tolling of Time  
Allowed for Compliance with Demand

(b) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this Act or upon any constitutional or other legal right or privilege of such person.

Jurisdiction of Court;  
Orders; Appeals; Contempt

(c) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this title. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Applicability of Federal Rules  
of Civil Procedure

(d) To the extent that such rules may have application and are not inconsistent with the provisions of this title, the Federal Rules of Civil Procedure shall apply to any petition under this title.

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1982

SECTIONAL ANALYSIS  
AND  
EXPLANATION



## TITLE I

### INTELLIGENCE ACTIVITIES

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 1982.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1982 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 provides that the program ceilings specified in the Schedule of Authorizations are intended to be limitations on obligations and expenditures. The section requires that funds obtained from any source, whether direct appropriations, transfers, reprogrammings, etc., not be obligated in excess of the program levels specified in the Schedule except by notification. The section is not intended to alter existing arrangements worked out over many years between the Executive Branch and the Committees on Armed Services and Appropriations regarding notification for prior approval, dollar thresholds by appropriation category, etc. These arrangements have been adhered to by the Executive Branch and the Permanent Select Committee on Intelligence for intelligence matters and will continue to be. The purpose of section 103 is to allow for reprogramming and transfer actions which exceed one or more individual program authorization ceilings without creating the need for supplemental authorization but, at the same time, assuring that such actions are made in consultation with the oversight and appropriations committees. The section also makes clear that statutory provisions such as 31 U.S.C. 628 which limit the transfer of funds between appropriations are not applicable to the reprogramming of funds among the intelligence programs for which funds are authorized to be appropriated by section 101. This language is needed because funds for the National Foreign Intelligence Program could arguably be considered to originate technically in separate appropriations of the various departments and agencies listed in section 101.

Section 104 makes clear that, with the exception of any specific legislative authorities which may be contained in the Intelligence Authorization Act for Fiscal Year 1982, the

Act is intended only to authorize appropriations and does not constitute authority for the conduct of any intelligence activity prohibited by the Constitution or laws of the United States.

## TITLE II

### INTELLIGENCE COMMUNITY STAFF

Section 201 authorizes appropriations for the Intelligence Community Staff, which provides the Director of Central Intelligence with staff assistance to carry out his Intelligence Community responsibilities.

Subsection 202(a) authorizes personnel end strength for the Intelligence Community Staff, and provides that personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection 202(b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence and intelligence-related activities.

Subsection 202(c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides the Director of Central Intelligence with authority to manage the activities and to pay the personnel of the Intelligence Community Staff. In the case of detailed personnel, however, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

TITLE III

CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes fiscal year 1982 appropriations  
for the Central Intelligence Agency Retirement and Disability  
Fund.

## TITLE IV

### TECHNICAL PROVISIONS

Section 401 provides authority for adjustments to federal employee compensation and benefits during fiscal year 1982 which are increased by current or subsequently enacted law. The section obviates the necessity for separate authorizations for such increases during the fiscal year.

Section 402 brings the intelligence and intelligence-related activities authorization of appropriations process into technical compliance with section 607 of P.L. 93-344, the Congressional Budget and Impoundment Control Act of 1974, which requires that appropriations be authorized in the calendar year prior to the year in which the fiscal year begins.

Section 403 eliminates the phrase "at a rate not to exceed \$50 for each day of service," from the last sentence of 50 U.S.C. 405(a). This is an amendment to section 303 of the National Security Act of 1947 (50 U.S.C. 401 et seq.), which, prior to the passage of the Central Intelligence Agency Act of 1949, provided the Director of Central Intelligence with specific authority to employ part-time advisory personnel to serve on advisory panels and committees. The provision has remained on the books with a maximum daily pay rate set at fifty dollars, despite the subsequent enactment of section 8 of the CIA Act (U.S.C. 403j) which authorizes the expenditure of funds for personal services as necessary to carry out CIA functions, notwithstanding other provisions of law. This statutory authority serves as the CIA charter to employ its personnel, "without regard to limitations on types of persons to be employed," and to obtain the additional personal services of experts, consultants, and other independent contractors.

The anomaly that has existed over the years as a result of the duplicative presence of the broad authority of section 8 to hire and pay experts and consultants, and the more limited authority with respect to experts and consultants found at 50 U.S.C. 405, is clarified by the amendment in order to ensure that all experts and consultants are paid on the basis of uniform standards and policies.

The proposed amendment is fully consistent with government-wide personnel policies. Previously existing provisions with respect to a fifty dollar per day limit for the compensation of advisory committee members by other government agencies have been superseded by the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix I). That Act, which exempts the CIA and the Federal Reserve System from its coverage because of public disclosure provisions, provides that advisory committee members shall receive compensation at a rate not to exceed the rate specified for GS-18 of the General Schedule. Despite its exemption, the Central Intelligence Agency generally adheres to this limitation in the compensation of its experts and consultants pursuant to its section 8 authorities.

## TITLE V

### OFFSETTING DISINCENTIVES TO OVERSEAS SERVICE

Subsections 501(a) and (b) supplement the expenditure authority of the Director of Central Intelligence (DCI) under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j). The purpose of the provisions is to demonstrate clearly and convincingly that the Congress and the American people value the efforts of the nation's intelligence officers no less than that of members of the Foreign Service.

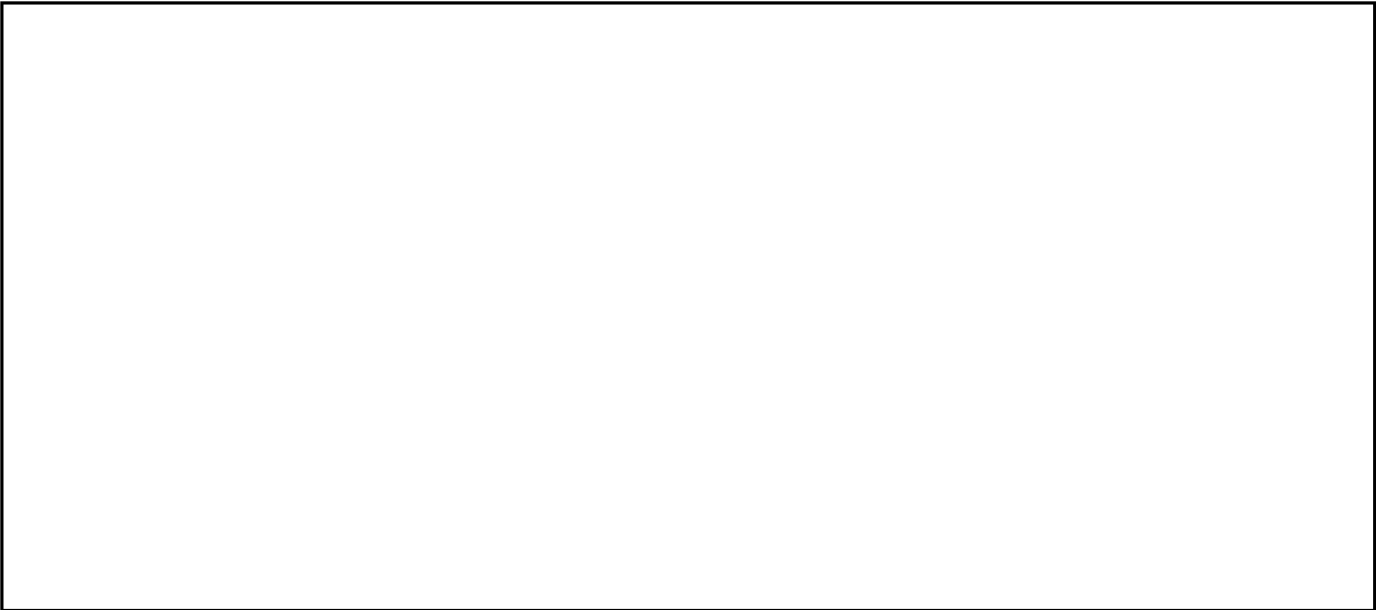
Passage of the Foreign Service Act of 1980 (P.L. 96-465) has eroded the morale of CIA employees and has had a similar effect on personnel of other elements of the Intelligence Community who serve overseas in like circumstances. The allowances and benefits provisions of the Foreign Service Act of 1980 were enacted in part to offset a growing realization that disincentives to service abroad have increased dramatically in recent years. The Intelligence Community supported these allowances and benefits provisions because the Community recognized from its own experience the need for such remedial measures. Changing social and economic values have resulted in an increased number of spouses seeking employment outside the home. An assignment overseas does not generally permit spouses to remain employed. Hence, family income decreases in an overseas environment in which the purchasing power of the dollar has seriously declined. In addition, the normal marital and family stress of overseas service has been magnified because the safety of U.S. overseas missions and their personnel has become increasingly questionable in many areas of the world.

Subsections 501(a) and (b) would provide the Director of Central Intelligence with greater flexibility to deal with disincentives associated with intelligence service overseas. This action by the Congress would be far preferable to exercise of the Director's authorities under the CIA Act to administratively adjust allowances and benefits so that they are more or less comparable to those contained in Chapter 9 of the Foreign Service Act of 1980 or enacted subsequently for the benefit of members of the Foreign Service or their dependents. This is because an administrative solution would take time and have far less impact than rapid congressional action. In order to proceed under the CIA Act it would be necessary to focus upon each allowance and benefit individually.

Any allowances and benefits duplicated under the CIA Act, moreover, would be within the context of the CIA personnel system and limited to officers and employees of the CIA.

Various Intelligence Community entities have personnel serving overseas, and disincentives to service abroad are experienced by them all. Accordingly, the Director of Central Intelligence should be able to authorize comparability in overseas benefits and allowances on a Community-wide basis so as to ensure the effective performance of all authorized intelligence functions. Enactment of this authority will serve as a clear indication to the Intelligence Community's overseas personnel that their concerns are understood and that positive steps are being taken to offset the detrimental aspects of service abroad.

STAT The enactment of subsections 501(a) and (b) would also serve to guarantee the elimination of disparities between members of the Foreign Service and officers and employees of the Intelligence Community which have aided individuals bent on destroying the foreign intelligence capabilities of the United States in their efforts to identify Intelligence Community officers and employees serving undercover.



Subsection 502(ii) is an extension of the principles embodied in subsections 501(a) and (b). In an age in which the provision of accurate intelligence to policymakers is increasingly crucial, but when disincentives to overseas service are so dramatically on the rise, it is essential that the Director of Central Intelligence have the broadest



flexibility to act quickly and on an Intelligence Community-wide basis in the allowances and benefits area to ensure the effective performance of authorized intelligence functions.

Section 503 defines "Intelligence Community" for purposes of Title V.

## TITLE VI

### AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA)

Section 601 amends subsection 102(a) of the FISA by adding a new provision which would clarify existing law by expressly allowing the Attorney General to authorize, without a court order, physical entry of property or premises under the open and exclusive control of certain types of foreign powers, for the purpose of implementing an electronic surveillance under subsection 102(a). The provisions of subsection 102(a) for a narrow category of surveillances without a court order do not specifically make reference to physical entry for the purpose of installing, repairing, or removing surveillance devices. The purpose of the amendment is to clarify the law to ensure that lawful surveillances are not frustrated by uncertainty over such physical entry authority. The amendment would not authorize physical entry without a court order for any purpose other than the installation, repair, or removal of devices used for the narrow category of electronic surveillances that may be directed against certain types of foreign powers pursuant to the Attorney General's certification under subsection 102(a) of the FISA.

Section 602 remedies a deficiency which was not foreseen when the FISA was enacted. Section 602 amends subsection 101(b)(2) of the FISA by modifying the targeting standards pertaining to agents of foreign powers so as to permit electronic surveillance of dual nationals who occupy senior positions in the government or military forces of foreign governments or factions while simultaneously retaining U.S. citizenship, and of former senior officials whether or not they are acting in the United States as members of a foreign government or faction. Experience under the FISA has shown that this amendment is necessary to avoid the repetition of situations which have resulted in the loss of significant foreign intelligence information.

Section 603 amends subsection 105(e)(2) of the FISA by changing from 24 to 48 hours the time limit on electronic surveillance that may be authorized without a court order in an emergency situation pursuant to that subsection. Extension of the emergency surveillance period would aid in ensuring that there is sufficient time to accomplish the administrative steps necessary for submission of applications to the FISA court without running the risk of having to terminate an emergency surveillance under the terms of the Act. The

change would not affect provisions which require subsequent court review of emergency surveillances and which restrict the use of information obtained from any such surveillance which the court disapproves.

## TITLE VII

### PROTECTION OF INTELLIGENCE PERSONNEL AND INSIGNIA/ PROHIBITION OF FALSE REPRESENTATION

Subsection 701(a) amends section 1114 of title 18, United States Code, to make the murder or manslaughter of an officer or employee of the Intelligence Community a federal crime, if the officer or employee was performing his official duties when the act was committed, or if the act was committed on account of the performance of his official duties. Inclusion of the phrase "not already covered under the terms of this section" takes cognizance of the fact that the intelligence element of one entity within the Intelligence Community, the Federal Bureau of Investigation, is already covered under current law, which includes a broad spectrum of federal officers and employees. The amendment corrects a serious and incongruous omission in current law by giving officers and employees of the Intelligence Community the protection of 18 U.S.C. 1114. The amendment defines Intelligence Community as in section 4-207 of Executive Order 12036 ("United States Intelligence Activities," 24 January 1978) or its successors. The amendment would also enlarge the protections afforded all of the agencies, departments and officials listed in section 1114 of title 18 by extending federal jurisdiction to include attempted murder, which would be punishable by imprisonment for not more than twenty years. In addition, inclusion in 18 U.S.C. 1114 of "officers or employees of any department or agency within the Intelligence Community" automatically extends to such individuals, by statutory reference, the protections afforded under 18 U.S.C. 111, "assaulting, resisting, or impeding certain officers or employees [of the United States]."

Subsection 701(b) amends paragraph 1116(b)(6) of title 18, United States Code, to include within the definition of "official guest" three categories of citizens or nationals of a foreign country present in the United States as official guests of the U.S. Government.

Subparagraph (A) encompasses "official guests" already covered under current law. Subparagraph (B) encompasses citizens or nationals of a foreign country present in the U.S. under the auspices of any department or agency of the Intelligence Community pursuant to designation as an official guest by the Director of Central Intelligence or a designee. It is contemplated that any such delegation would be to the head of the department or agency within the Intelligence Community under whose auspices the citizen or national of a foreign country is present in the U.S. Subparagraph 1116(b)(6)(C) encompasses citizens or nationals of a foreign country present in the U.S. under the provisions of section 7 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403h.

The amendment would make the murder or manslaughter of such individuals a federal crime. Moreover, the amended version of 18 U.S.C. 1116(b)(6) would include these individuals within the protective scope of four additional statutory provisions which relate to "official guests": 18 U.S.C. 112 (assault); 878 (threats and extortion); 970 (destruction of property); and 1201 (kidnapping).

Persons in the United States under the auspices of departments or agencies within the Intelligence Community generally include foreign nationals whose temporary presence in the United States furthers United States intelligence objectives. This category of individuals could include intelligence sources, members of foreign intelligence services, and foreign nationals working abroad for the United States. Persons in the United States under 50 U.S.C. 403h are aliens admitted to permanent residence because of their special contributions to the national intelligence mission. These are persons who have worked to further the national security interests of the United States in foreign countries, placing their careers and lives in jeopardy. These individuals, who may have been clandestine intelligence agents, sources or defectors, often reside in the the U.S. under assumed identities and sometimes continue to provide ongoing assistance to our foreign intelligence mission.

Section 702 amends 18 U.S.C. 709 so as to afford the Central Intelligence Agency name and the initials "C.I.A." protection against false advertising or misuse similar to that which 18 U.S.C. 709 presently provides to a host of federal agencies, including agencies such as the Federal Bureau of Investigation, the Federal Home Loan Bank, and the Department of Housing and Urban Development. Extension of the protection afforded by 18 U.S.C. 709 to the Central Intelligence Agency corrects an incongruous omission in current law. The mission and function of the CIA are clearly as important and as sensitive as those of the FBI and of the other departments and agencies presently protected by section 709. In light of past abuses of authority ascribed to the CIA, moreover, it is particularly imperative that the integrity of the Agency's name and initials be preserved and protected from any possible misuse.

The amendment in section 702 modifies the tenth paragraph of 18 U.S.C. 709 so as to give the CIA name and initials the same protection which that paragraph now affords to the FBI. In addition, the amendment affords needed new protection to the seals of both the Agency and the Bureau, and it provides additional protection against the misuse of the CIA and FBI

names, initials or seals in connection with unauthorized solicitations, impersonations or representations whether or not the misuse is related to such things as publications, motion pictures or telecasts.

## TITLE VIII

### PROTECTION OF INTELLIGENCE INFORMATION

Section 801 states congressional findings as to the need for the legislation.

Section 802 defines the terms "classified information" and "unauthorized disclosure."

"Classified information" is defined as information or documentary material which has been determined pursuant to provisions of a statute or Executive Order to warrant protection against unauthorized disclosure for reasons of national security, and which has been clearly marked or represented as such.

"Unauthorized disclosure" is defined as any communication, revelation, or publication by a person who has no authority, right or permission to do so pursuant to one of three sources which allow such disclosures. The first source is statute or Executive Order and the regulations and procedures issued pursuant thereto. Persons with authority to declassify information will nevertheless make an unauthorized disclosure if such persons (1) do not follow the regulations and procedures applicable to declassification, (2) otherwise make a disclosure that is not a matter of record, or (3) disclose classified information to a person who does not possess a security clearance and have a need to know such information for the performance of official duties. The second source of authority for disclosure of classified information is an order of any federal court. The third source of authority for such disclosures is a Rule of the House of Representatives or Resolution of the Senate.

Section 803 is intended to make it clear that any officer or employee of the Executive Branch, including any member of the uniformed services, can be removed from the civil service or the uniformed services if found to be responsible for the unauthorized disclosure of classified information. This is so notwithstanding any other provision of law in order to make it clear that such disclosures are grounds for removal notwithstanding any statutory requirement that removal will be only for such cause as would promote the efficiency of the service, or any other similar provisions. Such removals shall be accomplished in accordance with any current procedural requirements applicable to the particular person under statute or regulation. Because of the problems

that would be associated with additional disclosure of classified information during a court proceeding, removal for unauthorized disclosure of classified information is not reviewable in any court of the United States.

Section 804 is intended to make it clear that the FBI is authorized to investigate any unauthorized disclosure of classified information. Investigation by the FBI is mandatory, upon recommendation of the head of any department or agency, for the purpose of determining whether a federal officer or employee or member of the uniformed services caused an unauthorized disclosure. Subsection (b) is intended to make it clear that in the conduct of such investigations the FBI is authorized to interview any person and to use any investigative technique otherwise available under the Constitution and laws of the United States.

Section 805 authorizes the Attorney General, the Assistant Attorneys General in charge of the Civil Division or the Criminal Division of the Department of Justice and the Director of the Federal Bureau of Investigation to issue a civil investigative demand to any person believed to be in the possession, custody or control of documentary material relevant to an investigation of an unauthorized disclosure of classified information. The section specifies the contents of the demand, which must be in writing. The demand may not contain any requirement which would be unreasonable if contained in a subpoena duces tecum issued by a federal court in aid of a grand jury investigation of such alleged unauthorized disclosure of classified information, or require production of any documentary material which would be privileged from disclosure if demanded by a subpoena duces tecum for that purpose. The section specifies that any agent of the FBI, United States marshal, or deputy marshal may serve such civil investigative demand at any place within the territorial jurisdiction of any U.S. court.

Section 806 authorizes the Attorney General to petition for judicial enforcement of a civil investigative demand whenever any person fails to comply with such demand or otherwise fails to produce the requested documents and materials for copying or reproduction. This section also allows any person subject to a civil investigative demand to file a petition in federal district court for an order modifying or setting aside the demand. Any petition for such order shall specify the grounds upon which the relief sought in the petition is based, including any constitutional or other legal right or privilege of the petitioner. This



section provides jurisdiction for United States district courts to hear petitions filed under this section and provides that the final orders issued under the title are appealable pursuant to Section 1291 of title 28 United States Code. Any disobedience of the final order issued pursuant to this section shall be punished as a contempt of court. This section provides that to the extent not inconsistent with the title, the Federal Rules of Civil Procedure shall apply to any petition under the title.

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1982

CHANGES IN EXISTING LAW

Note: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; new material is underscored.

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: No substantive change.

Section 102: No substantive change.

Section 103: Statutory provisions limiting the transfer of funds between appropriations shall not apply to the reprogramming of funds among the intelligence programs for which funds are authorized to be appropriated by section 101.

Section 104: Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is [not otherwise authorized] prohibited by the Constitution or laws of the United States.

TITLE II

INTELLIGENCE COMMUNITY STAFF

Section 201:

STAT

Subsection 202(a):  personnel...

Subsection 202(b): No substantive change.

Subsection 202(c): No substantive change.

Section 203: No substantive change.

TITLE III

CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY  
SYSTEM

STAT

Section 301:

TITLE IV

TECHNICAL PROVISIONS

Section 401: No substantive change (section 408 of the fiscal year 1981 Act).

Section 402: New provision.

Section 403: Amends the last sentence of 50 U.S.C. 405(a) as follows:

"Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation [at a rate not to exceed \$50 for each day of service,] as determined by the appointing authority."

TITLE V

OFFSETTING DISINCENTIVES  
TO OVERSEAS SERVICE

Subsection 501(a): New provision.

Subsection 501(b): New provision.

Section 502 : New provision.

Section 503 : New provision.

TITLE VI

AMENDMENTS TO THE FOREIGN  
INTELLIGENCE SURVEILLANCE ACT  
(FISA)

Section 601: Adds the following new provision to subsection 102(a) of the FISA:

"(5) The Attorney General may authorize physical entry of property under the open and exclusive control of a foreign power, as defined in subsections 101(a)(1), (2), or (3), for the purpose of installing, repairing, or removing any electronic, mechanical, or other surveillance device used in conjunction with an electronic surveillance authorized in accordance with subsection 102(a)."

Section 602: Modifies the definition of "agent of a foreign power" contained in subsection 101(b)(2) of the FISA as follows:

"(2) any person who --

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; [or]

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C) [.] or

(E) is a current or former senior official of a foreign power as defined in subsection (a)(1) or (2)."



Section 603: Amends subsection 105(e)(2) of the FISA as follows:

(e) Notwithstanding any other provision of this title, when the Attorney General reasonably determines that --

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this title to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this title is made to that judge as soon as practicable, but not more than [twenty-four] forty-eight hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of [twenty-four] forty-eight hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by federal officers or employees

without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

TITLE VII

PROTECTION OF INTELLIGENCE  
PERSONNEL AND INSIGNIA/  
PROHIBITION OF FALSE REPRESENTATION

Subsection 701(a): Amends 18 U.S.C. 1114 as follows:

"Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshall or deputy marshall or person employed to assist such marshall or deputy marshall, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correction institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, The Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, the Department of Commerce, or the Department of Labor or of

the Department of the Interior, or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, [while engaged in the performance of his official duties, or on account of the performance of his official duties,] or any officer or employee of any department or agency within the Intelligence Community (as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders), not already covered under the terms of this section, or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration while engaged in the performance of his official duties, or on account of the performance of his official duties shall be punished as provided under section 1111 and 1112 of this title [.] , except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

Subsection 701(b): Amends 18 U.S.C. 1116(b)(6) as follows:

"(b) For the purposes of this section:

(6) "Official guest" means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States -

(A) pursuant to designation as such by the Secretary of State [.]; or

(B) under the auspices of any department or agency within the Intelligence Community (as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders) pursuant to designation as such by the Director of Central Intelligence or his designees; or

(C) under the provisions of 50 U.S.C. 403h."

Section 702: Amends the tenth paragraph of 18 U.S.C.  
709 as follows:

"Whoever, except with the written permission of the Director of the Federal Bureau of Investigation or the Director of Central Intelligence, knowingly uses the words "Federal Bureau of Investigation" or "Central Intelligence Agency" or the initials "F.B.I." or "C.I.A." or the seals thereof, or any colorable imitation of such words, [or] initials [,] or seals in connection with any solicitation, impersonation or representation for other than authorized purposes or in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the Federal Bureau of Investigation or the Central Intelligence Agency; or"

TITLE VIII

PROTECTION OF INTELLIGENCE  
INFORMATION

Sections 801-806: New provisions

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1982

COST ANALYSIS

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: Fiscal Year 1982 authorizations are contained in the classified Schedule of Authorizations.

Section 102: Cost analysis not applicable.

Section 103: Cost analysis not applicable.

Section 104: Cost analysis not applicable.



TITLE II

INTELLIGENCE COMMUNITY STAFF

STAT Section 201: The authorization for fiscal  
year 1982

Subsection 202(a): The authorized personnel  
end strength as of September 30, 1982  STAT

Subsection 202(b): Cost analysis not applicable.

Subsection 202(c): Cost analysis not applicable.

Section 203: Cost analysis not applicable.

TITLE III

CENTRAL INTELLIGENCE AGENCY  
RETIREMENT AND DISABILITY SYSTEM

Section 301: The fiscal year 1982 authorization

STAT



TITLE IV

TECHNICAL PROVISIONS

Section 401: Cost analysis impossible to determine.

Section 402: Technical compliance with section 607 of P.L. 93-344 only; cost analysis not applicable.

Section 403: Removal of obsolescent statutory language; will not result in additional expenditures.

TITLE V

OFFSETTING DISINCENTIVES  
TO OVERSEAS SERVICE

Subsection 501(a): Authority granted would not result in measurable new expenditures beyond those that would result from the administrative adjustment of allowances and benefits in accordance with the authorities already contained in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j) and in section 402 of the Intelligence Authorization Act for Fiscal Year 1981 ("Administrative Provisions Relating to the National Security Agency").

Subsection 501(b): Cost analysis impossible to determine.

Section 502: The estimated cost for subsection (i) during the first fiscal year following enactment and during each of the four succeeding fiscal years is \$85,000. This figure is premised upon an estimate of 30 qualifying assignments per year. The cost analysis for subsection (ii) is impossible to determine.

Section 503: Cost analysis not applicable.

TITLE VI

AMENDMENTS TO THE  
FOREIGN INTELLIGENCE  
SURVEILLANCE ACT

Section 601: Cost analysis not applicable.

Section 602: Cost analysis not applicable.

Section 603: Cost analysis not applicable.

TITLE VII

PROTECTION OF INTELLIGENCE  
PERSONNEL AND INSIGNIA/  
PROHIBITION OF FALSE  
REPRESENTATION

Subsection 701(a): No programmed expenditures  
contemplated.

Subsection 701(b): No programmed expenditures  
contemplated.

Section 702: No programmed expenditures  
contemplated.

TITLE VIII

FACILITATING INVESTIGATIONS  
OF UNAUTHORIZED DISCLOSURES  
OF CLASSIFIED INFORMATION

Section 801: No programmed expenditures contemplated.